

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 901**

Introduced by Preister, 5

Read first time January 5, 2006

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to environmental protection; to amend section  
2 81-1513, Reissue Revised Statutes of Nebraska; to change  
3 procedures for the granting of variances from Department  
4 of Environmental Quality rules or regulations; to  
5 harmonize provisions; and to repeal the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 81-1513, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           81-1513 (1) Any person who owns or is in control of any  
4 plant, building structure, process, or equipment may apply to the  
5 director for a variance from rules or regulations. The director  
6 may grant such variance if he or she finds that the emissions or  
7 discharges occurring or proposed to occur do not endanger or tend  
8 to endanger human health or safety or that compliance with the  
9 rules or regulations from which variance is sought would produce  
10 serious hardship without equal or greater benefits to the public.  
11 In making such findings the director shall give due consideration  
12 to all the facts and circumstances bearing upon the reasonableness  
13 of the emissions or discharges involved including, but not limited  
14 to:

15           (a) The character and degree of injury to or interference  
16 with the health and physical property of the people;

17           (b) The social and economic value of the source of the  
18 air, water, or land pollution;

19           (c) The question of priority of location in the area  
20 involved; and

21           (d) The technical practicability and economic  
22 reasonableness of reducing or eliminating the emissions or  
23 discharges resulting from such source.

24           (2) No variance shall be granted until the director has  
25 considered the relative interests of the applicant, other owners of

1 property likely to be affected by the discharges, and the general  
2 public. Before any variance is granted, the director shall give  
3 public notice of an application for such variance immediately upon  
4 receipt of such application and in accordance with the rules and  
5 regulations of the department. The notice shall be published in  
6 the county in which the plant, building structure, process, or  
7 equipment on which the proposed variance is located.

8 (3) Any variance or renewal thereof shall be granted  
9 within the requirements of subsection (1) of this section, for time  
10 periods and under conditions consistent with the reasons therefor,  
11 and within the following limitations:

12 (a) If the variance is granted on the ground that  
13 there is no practicable means known or available for the adequate  
14 prevention, abatement, or control of the air, water, or land  
15 pollution involved, it shall be only until the necessary means for  
16 prevention, abatement, or control become known and available and  
17 subject to the taking of any substitute or alternate measures that  
18 the director may prescribe;

19 (b) If the variance is granted on the ground that  
20 compliance with the particular requirement or requirements from  
21 which variance is sought will necessitate the taking of measures  
22 which, because of their extent or cost, must be spread over a  
23 considerable period of time, it shall be for a period not to exceed  
24 such reasonable time as, in the view of the director, is requisite  
25 for the taking of the necessary measures. A variance granted on the

1 ground specified in this section shall contain a timetable for the  
2 taking of action in an expeditious manner and shall be conditioned  
3 on adherence to such timetable; and

4 (c) If the variance is granted on the ground that it is  
5 justified to relieve or prevent hardship of a kind other than that  
6 provided for in subdivision (a) or (b) of this subsection, it shall  
7 be for not more than one year.

8 (4) Any variance granted pursuant to this section may  
9 be renewed on terms and conditions and for periods which would  
10 be appropriate on initial granting of a variance. If complaint  
11 is made to the director on account of the variance, no renewal  
12 thereof shall be granted unless the director finds that renewal  
13 is justified. No renewal shall be granted except on application  
14 therefor. Any such application shall be made at least thirty  
15 days prior to the expiration of the variance. Immediately upon  
16 receipt of an application for renewal and before approving the  
17 renewal application, the director shall give public notice of  
18 such application in accordance with rules and regulations of the  
19 department. The public notice shall be published in the county in  
20 which the plant, building structure, process, or equipment on which  
21 the variance is located.

22 (5) A variance or renewal shall not be a right of the  
23 applicant or holder thereof but shall be in the discretion of the  
24 director. The granting or denial of a variance or a renewal shall  
25 be by final order of the director. Any person adversely affected by

1 such an order may appeal the decision, and the appeal shall be in  
2 accordance with the Administrative Procedure Act.

3 (6) Nothing in this section and no variance or renewal  
4 granted pursuant to this section shall be construed to prevent or  
5 limit the application of the emergency provisions and procedures of  
6 section 81-1507 to any person or his or her property.

7 (7) No variance shall be granted which will sanction any  
8 violation of state or federal statutes or regulations.

9 Sec. 2. Original section 81-1513, Reissue Revised  
10 Statutes of Nebraska, is repealed.